

EX-OFFENDERS IN EMPLOYMENT

—Issues Surrounding Ex-Offender Hiring Practices in Iowa—

Currently, Iowa law lacks statutory language that would include Iowans with a criminal history as a protected class (this lack of coverage mirrors most of the nation). However, Iowa has been shown to parallel EEOC guidance that states that an employer may exclude an individual from employment on the basis of a conviction record *only if* the employer's decision was "justified by business necessity." The relevant factors, the EEOC says, include:

(1) The nature and seriousness of the offense; (2) the time that has passed since the conviction and/or completion of the sentence; and (3) the nature of the job held or sought. Thus, a blanket exclusion based on conviction records can seldom be justified. Application forms that ask about conviction records should include a statement to the effect that whether a conviction will disqualify an applicant depends on the nature of the offense, the nature of the job, and the length of time since the conviction and incarceration. (IWD)

Additionally, the state recognizes the disparate impact model of discrimination, which speaks to the range of discrimination that may occur by use of facially neutral criteria (arrest or conviction records) that may lead to a discriminatory impact on a protected class (e.g. African-Americans and Hispanics). These "protected classes" statistically make up a larger proportion of those with criminal records per capita, which directly contrasts with their representation in terms of relative population. Studies have shown that Iowa as a state incarcerates African-Americans at a rate 13.6 times higher than whites (the highest in the nation) (Boone). Recent years have seen federal and state action to address this unfortunate reality, but these efforts have been actualized mostly in the way of government funded programs. This funding, in its most palpable form, has established employer incentives such as the Fidelity Bond Program*, which insures companies for up to \$5000 for the first six months of employment; as well as the federal Work Opportunity Tax Credit (WOTC)*, which provides employers with a \$2400 tax credit for the hiring of an ex-offender. In addition, the state of Iowa offers a state tax credit* of 65% of the wages paid to an ex-felon in the first 12 months of employment—with a maximum deduction of \$20,000 per employee. Several cities around the country have also "upped the ante", including Philadelphia, which offers a tax incentive of \$10,000 per ex-offender.

*See below for details.

Typical of most states, Iowa has no specific statute addressing any form of protection for ex-offenders. However, there are several outlier states that have adopted more progressive statutes. Ten states (CA, HI, IL, MA, MI, NY, OH, RI, UT, and WI)

“prohibit public and private employers and occupational licensing agencies from using arrests that never led to convictions”. Fourteen states prohibit employment discrimination against qualified applicants with criminal histories; in some of these (AZ, CO, CT, FL, KY, LA, MN, NM, and WA) the laws only apply to public employers and occupational licensing agencies. In only five of these fourteen states (HI, KS, PA, NY, and WI) does this pertain to public and *private* employers—respectively, these statutes express that:

“Employers' use of criminal history information in employment decisions to criminal history which is rationally¹, reasonably², directly³, substantially⁴, or simply⁵ related to the job sought. In addition, some statutes employ further procedural protection either for the applicant (in the form of a right to receive a written copy of the reason for denial of a job⁶ or even a prohibition on inquiry into criminal history until a tentative job offer has been made)⁷ or the employer (in the form of limited liability for negligent hiring).⁸” (Geiger)

In the wake of a growing state (and national) problem of joblessness, poverty, and crime—like-action in one form or another may certainly become a topic of discussion, bringing about the potential for “ex-offender protections legislation” (as has been proposed by such organizations as the national H.I.R.E. Network, who recommended in a testimony before a Congressional subcommittee to “enact a federal standard based on recommendations outlined in the EEOC” (Meyers-Peebles)). Though, historically, much of this constituency has been marginalized, growing numbers may eventually call for and depend upon more compelling measures.

The fear and apprehension that accompanies the hiring of ex-offenders is tangible, but most research on the matter points in a different direction. As, Terri Jackson, the founder a Denver-based telecommunications company has stated, “Of all the groups we targeted, ex-offenders turned out to be the best employees, in part because they usually have a desire to create a better life for themselves... They are often highly motivated and many have usable job skills that are desirable for an employer. They come to work every day and do not engage in the type of behaviors that will land them back in the penal system.” Studies show that job retention for ex-offenders directly correlates with lower recidivist rates, helping curb the continued waste of taxpayer dollars on a cyclical penal system, as well as lowering crime rates. Despite this, ex-offenders continue to be an underutilized resource for quality labor.

A number of cities within Iowa have undertaken successful initiatives—most notably Des Moines, whose programs Urban Dreams and Spectrum have become national models of anti-recidivist success (Boone). Nationwide, programs like the Chicago-based Safer Foundation and the aforementioned H.I.R.E. Network are working to prepare offenders and ex-offenders for rehabilitation and reentry into the workforce. However, one common obstacle for these groups has been the inability to break down the legal barriers for ex-offender reentry. Whether there are federal restrictions for certain industries (e.g. finance, insurance, unions, healthcare, childcare, prisoner transportation, aviation, port

and ground transportation workers, and private security guards (Meyers-Peebles)) or lack of legal protections in private and public hiring practices—employment continues to be a problem for those convicted of, or as is the case in most states, arrested for a crime.

While the parallels between the State of Iowa’s case law and EEOC guidance make a push for legislation appear inessential, it is important to remember that there is no formal federal standard that would preempt any state law on the matter. This effectively puts the fate of an already trivialized demographic in the hands of the State's vague statutory language. Further specificity may provide for a more concise approach to the problems associated with recidivism and joblessness—which continue to plague those with criminal records, especially members of minority groups who have been most disproportionately affected.

The U.S. Department of Labor has a **Fidelity Bonding Program** available for returning ex-felons to aid in finding meaningful, full-time employment and to protect employers against theft, fraud, forgery, larceny, or similar events. The Bond is good for six months and renewable at the employer’s cost for another six months.

- Business insurance policies that protect against theft, forgery, larceny, or embezzlement of money or property by an employee who is covered by the bond.
- Department of Labor (DOL) will post a \$5000 bond at no cost to the employer for a 6 month period.
- Contact: Iowa Workforce Development (515) 281-9097.

The Internal Revenue Service can authorize up to a \$2400 Tax Credit for your business. This is an incentive to hire ex-felons and is known as the **Work Opportunity Tax Credit (WOTC)**.

- This can only be used for a new hire.
- The employer cannot have used the tax credit for the same person in the past.
- Employment must be full-time (over thirty hours per week).
- You must be employed for six months.
- A “letter of incarceration” is required and must be provided.
- No fee to the employer.
- Very little paperwork is required
- Needs to be done within 21 days from the employee’s start date.
- Contact: Iowa Workforce Development (515) 281-9010.

* Visit <http://www.iowaworkforce.org/region1/tips%20.pdf> for more information.

Iowa employers that meet the following criteria are allowed an *additional* deduction on their Iowa income tax returns for hiring ex-offenders. This deduction is 65 percent of the wages paid in the first 12 months of employment; the maximum deduction is \$20,000 per employee. This deduction is in *addition* to the targeted jobs tax credit.

- The employer claims the deduction on the Iowa 1040 individual income tax return under "other adjustments" or on the Iowa corporation income tax return under "other reductions."
- If 65 percent of an employee's wages does not meet the \$20,000 maximum in a single tax year, the balance may be claimed the following year to the extent the employee worked fewer than 12 months in the initial year.
- If a business employed an ex-offender prior to learning of this benefit, the employer may amend income tax returns to include the deduction. Returns can only be amended within three years from the due date of the return.
- An employer claiming the additional deduction must submit a separate sheet with the tax return with the following information: the employee's name, address, Social Security number, date of hiring, and total wages paid.
- The qualifying employee may be any age; no age restrictions apply.
- The qualifying employee must be a new hire. A current employee who becomes an ex-offender does not qualify.
- The qualifying employee may hold more than one job; each employer may take the deduction.
- The qualifying employee does not have to be employed full time.

* Visit <http://www.state.ia.us/tax/educate/78522.html> for more information.

FOR MORE INFORMATION ON EX-OFFENDERS AND HIRING PRACTICES, PLEASE VISIT:

Iowa Workforce Development,
www.iowaworkforce.org

Iowa Workforce Development, "*Successful Interviewing Guide*"
<http://www.iowaworkforce.org/70-0006.pdf>

Iowa Workforce Development, "*Tips for Individuals with Criminal Histories*"
<http://www.iowaworkforce.org/region1/tips%20.pdf>

Urban Dreams,
<http://www.urbandreams.org/>

The Safer Foundation,
www.saferfoundation.org/

The H.I.R.E. Network,
www.hirenetwork.org/

The Sentencing Project,
<http://www.sentencingproject.org/>

RESOURCES:

“Successful Interviewing Guide”, Iowa Civil Rights Commission & Iowa Workforce Development. September 14, 2007.

“Tips for Individuals with Criminal Histories”, Iowa Workforce Development. July 24, 2006.

Boone, Dana. “War on Drugs among Reasons for Racial Disparity in Iowa Prisons, Expert Says.” *The Iowa Independent*. January 30, 2008.

Boone, Dana. “Keeping Ex-Offenders From Going Back Behind Bars — Des Moines Program Is a Model.” *The Iowa Independent*. October 29, 2007.

Meyers-Peebles, Roberta. “An Examination on Federal Employment Practices/Policies on Hiring Ex-Offenders.” Written Congressional Testimony (on behalf of the H.I.R.E Network). June 10, 2008.
<http://federalworkforce.oversight.house.gov/documents/20080610165028.pdf>

Geiger, Ben. “The Case for Treating Ex-Offenders as a Suspect Class” *California Law Review*. July, 2006. 94 Calif. L. Rev. 1191

¹Haw. Rev. Stat. Ann. 378-2.5 (LexisNexis 2004).

²Kan. Stat. Ann. 22-4710(f) (2005).

³N.Y. Exec. Law 296(15); N.Y. Correct. Law 750-54 (McKinney 2005).

⁴Wis. Stat. Ann. 111.335 (West 2005).

⁵18 Pa. Cons. Stat. Ann. 9124 (West 2005).

⁶18 Pa. Cons. Stat. Ann. 9124 (West 2005).

⁷Haw. Rev. Stat. Ann. 378-2.5 (LexisNexis 2004).

⁸Kan. Stat. Ann. 22-4710(f) (West 2005).

⁹18 Pa. Cons. Stat. Ann. 9124 (West 2005)